

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

ELC. CASE NO. 338 OF 2013.

RUTH NASIMIYU KIBITI.....PLAINTIFF

VERSUS.

EMMANUEL MAKOKHA.....DEFENDANT

JUDGMENT.

[1]. The plaintiff brought this suit against the defendant and prayed for orders of permanent injunction to restrain the defendants and his servants relatives nominees, authorized agents and persons acting through him from encroaching tilling, ploughing invading and or in any other manner interfering with the plaintiffs quiet enjoyment of land parcel No. Bungoma/Soysambu/799.

[2]. The plaintiffs avers that he is the registered owner of the suit land. She said that she bought the land from Emmanuel Makokha in her statement filed in court. She explained how she bought various pieces of land from Basiko Makokha Wekhakhara, Florence Imunza, Ezekiel Musavula Mulunyi, Beatrice Nafula Wanyama, Gabriel Wafula Makokha, Radison Sirengo, Gabriel Wafula, Reba Wanyama and Basiko Makokha Wekhakhara. She said that all the parties she had purchased from had bought their lands from Basiko Makokha Wekhakhara. She annexed the agreements. She said that the subdivision was done culminating into her land Bungoma/Soysambu/1799 after the original owner of the subdivisions signed the land transfer after consent of the Land Control Board for the same was obtained. All those documents were annexed to the proceedings. After subdivision the remainder of the land was then registered in the name of Basiko Makokha Wekhakhara. The defendant herein was charged in Kimilili Law Courts for trespass on private land in Criminal Case No. 533 of 2012. The land was Bungoma/Soysambu/1799 the suit land herein. He was found guilty and put on probation for (5) five months. The charge sheet, Proceedings and Judgment were annexed to these proceedings. The plaintiff also produced an agreement between Professor Wanjala and the defendant for the purchase of $\frac{3}{4}$ of an acre from the defendant. She told the court that the Professor was her husband. She averred that the defendant was present when the land was surveyed. She stated that she wanted the court to stop the defendant from trespassing on her land.

[3]. Joel Wanyonyi gave evidence and said that he was a surveyor from Mali Survey Services. He said that he knew both the plaintiff and the defendant. He said that he prepared a report on 4/11/2011. He said that in his report, there is an encroachment of 0.146 heactares on the land of the plaintiff by the defendant. He said he did the entire subdivision of land parcel Bungoma/Soysambu 216 and that the defendant is one of the people who signed for that subdivision. He said that when he did the subdivision the plaintiff was present.

[4]. The defendant Emmanuel Makokha, disowned his statement filed in court on 9th June, 2016. He said that his parents were alive and that he would like to bring them and say where he stays. On cross examination by Mr. Murunga learned Counsel for the plaintiff, he admitted that he knew the surveyor. That when the land was surveyed he was present. He admitted that his father Pascal Makokha was alive and that he had not sued the plaintiff in regard to this land. He also admitted that he was charged in Kimilili Magistrates Court and was convicted of trespass and was given 4 months suspended sentence. He equally admitted that he did not appeal against that conviction. And that he had a lawyer who withdrew, one Elizabeth Chungu who wrote his statement and gave a copy to the plaintiffs advocate.

[5]. Having heard the case for the plaintiff and having perused all the documents produced, and equally having considered the reply of the defendant and his evidence in Court, I am convinced that the plaintiff has proved her case on the standards required. I grant the plaintiff her prayer for a permanent injunction against the defendant as prayed in her suit. She shall also have the costs of this suit.

Judgment read in Court in the presence of Mr. Murunga.

Dated at Bungoma this 22nd day of February, 2018.

S. MUKUNYA

JUDGE.

In the presence of:

Joy: Court Assistant

Mr. Murunga: For the Plaintiff

Defendant In Person not present